**HIGH COURT OF DELHI : NEW DELHI**

**C.S. (OS) No. 1204 of 2004**

Judgment reserved on: May 14, 2007
Judgment delivered on: December 04, 2007

# M/s. Kamdhenu Ispat Limited ..... Plaintiff
! Through: Mr. Ajay Amitabh Suman with Mr. Pankaj Kumar

versus

$ M/s. Kamdhenu Metal ..... Defendant
^ Through: None

***CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

**VIPIN SANGHI, J.**

1. By this order I propose to dispose of the above suit filed by the plaintiff seeking the relief of a perpetual injunction restraining passing off the goods by defendants under the mark 'Kamdhenu Metal', rendition of account of profits, delivery up, etc.

2. Summons were issued in the prescribed form and were duly served upon the defendant. However, the defendant did not take part in the proceedings and the matter was proceeded ex-parte against him. Ex-parte evidence was led. Documents were exhibited. Arguments advanced and orders reserved.

**PLAINTIFF'S CONTENTIONS**

3. The plaintiff company which is duly registered under the Companies Act, 1956, having its registered office at A-1114, Riico Industrial Area, Phase III, Bhiwadi, Alwar, Rajasthan and Delhi Office at 5/2, Punjabi Bagh Extension, New Delhi is a public limited company. The suit has been filed through Mr. Arvind Gupta, Company Secretary of the plaintiff who has been duly authorized for the said purpose vide a Board Resolution in his favour. The plaintiff company in the year 1991 honestly, bonafidely adopted the trademark / trade name 'Kamdhenu' in the course of the trade of manufacturing and marketing of Steel Bars and other allied goods. Plaintiff's products are being

distributed in the major parts of the country. The word 'Kamdhenu' also forms a vital part of its trade name, i.e., Kamdhenu Ispat Ltd.

4. Plaintiff has filed a number of applications under different classes of Trademarks Act, 1999 for the registration of the said mark.

5. The plaintiff also has copyright in the unique stylized manner alongwith the colour combination, in which the word 'Kamdhenu' is depicted. The same is registered under the Copyrights Act, 1957. The plaintiff's goods and business under the said trademark have acquired tremendous goodwill and enviable reputation in the market. The Plaintiff has built up an extensive trade thereunder. The plaintiff has spent enormous amount of money in publicizing the said trademark/trade name through several modes. As a result, the said trademark and trade name have acquired secondary meaning which denotes the plaintiff and its goods exclusively. Thus, the said trademark is a well known trademark within the meaning of Section 2(1)(ZG) of the

Trademarks Act, 1999. The public at large associates and identifies the said trademark with the plaintiff and its goods alone.

6. The defendants are engaged in the manufacturing and marketing of the steel products including household containers under the trademark / trade name 'Kamdhenu Metal'. Defendant No. 1 appears to be the firm and defendant No. 2 the person managing the affairs of defendant No. 1. However, the exact constitution/relation of the defendants is not known.

7. Towards the end of June, and beginning of July 2004, the plaintiff came to know that the products of the defendants are being sold under the trademark / trade name 'Kamdhenu Metal' identical in depiction as well, to that of the plaintiff.

8. The goods of the defendants are similar/cognate goods. The trademark / trade name adopted by them is identical and deceptively similar to the trademark / trade name that of the plaintiff in each and every respect including getup, make up and the artistic manner in which it is depicted. It is also phonetically similar to the plaintiff's trademark / trade name. Therefore, the

impugned trademark / trade name of the defendant is bound to cause, deception and confusion in the normal course of business and has been adopted by the defendant with the sole aim of riding piggyback on the reputation of the plaintiff. Thus, the defendants are passing off and enabling others to pass off their goods and business as that of the plaintiff. The defendants are not the proprietor of the impugned trademark / trade name and therefore have no right to adopt to use the same as a trademark / trade name or in any other manner without the leave, license or authority of the plaintiff.

9. The plaintiff through their attorneys addressed a cease and desist notice dated 14.7.2004 to defendant No. 1 calling upon it to desist from using the said trademark / trade name. The same was returned with the remarks 'unclaimed'. The plaintiff launched inquiries in the market about the business activities of the defendants and received information that the defendants had recently started using the said trademark / trade name commercially. The business is being carried out by the defendant in a clandestine manner without issuing any formal

bills and invoices against the sales being made by them.

10. The cause of action arose in its favour in the end of June and beginning of July 2004, when the plaintiff obtained knowledge of the illegal activities of the defendants. This court has jurisdiction to try and adjudicate upon the present suit as the impugned acts of passing off are being committed within the jurisdiction of this court, as the business is being conducted in Delhi and other parts of the country in clandestine manner. The plaintiff has its corporate office at Delhi and the application for registration of trademark has also been filed in Delhi. Thus, Section 134 of the Trademarks Act, 1999 is applicable.

**DISCUSSION AND DECISION**

11. Since the defendant has failed to appear, the matter was proceeded with ex-parte and after arguments order was reserved. However, while preparing the judgment it was noticed that the affidavit by way of evidence filed by the Plaintiff was deficient, inasmuch as, ex parte evidence with respect to the territorial jurisdiction of this court to entertain this suit was not led

and therefore the matter was listed for directions on 31.7.2007. Pursuant thereto, an additional affidavit by the Plaintiff was filed on 14th September 2007 taking care of the deficiencies. Since the matter is ex-parte, I will now proceed to consider the claim of the Plaintiff on the basis of the ex-parte evidence lead by it.

12. The Plaintiff has filed its evidence by way of affidavit as Ex. PW-1/A deposing the facts as narrated in the plaint. The Plaintiff also proved various documents marked as Ex.P-1 to Ex.P-4. Ex.P-1 is the document depicting the trademark of the Plaintiff. The mark KAMDHENU SARIA is depicted in red and black colour in Capital Letters in English and in the Devnagari script. It also comprises of a logo with the words “Sampurna Suraksha ki Guarantee” written in the Roman script and devnagri script. Ex.P-2 is the trademark/trade name adopted by the defendant. The depiction of the defendants mark “Kamdhenu Metal” in Ex. P-2 is in a different font. The Plaintiff's sales figure for the years 1995-96 to the years 2003-2004 have been exhibited as Ex.P-3. It is seen that the Plaintiff has sales figures of over Rs.75 crores in the year 2003-2004 and there has been a

steady growth in the sales from 1995-1996 onwards. By way of additional affidavit dated 21.7.2006, the Plaintiff has also filed a copy of the certificates issued by the trademark registry in respect of the registration of the trademark Kamdhenu in various classes.

13. Having gone through the evidence adduced by the Plaintiff and having perused the marks of the Plaintiff and the defendant, I am of the opinion that the Plaintiff has made out a case for grant of permanent injunction, as prayed for. Since the marks in question are phonetically similar, and the Plaintiff has been using its mark for the sale of its goods for a considerable period of time and has acquired goodwill and repute in the business in the market, therefore the likelihood of confusion and deception being caused to the public at large cannot be ruled out and appears to be inevitable. Since the plaintiff has been using this mark in respect of Steel and Allied products, the use of the mark by the defendant in respect of Steel Utensils can only lead an ordinary man to believe that the products have originated from the plaintiff or otherwise have connection with his business.

14. I, therefore, pass a decree in favour of the plaintiff, permanently injuncting and restraining the defendants and their proprietors/partners, servants, agents, representatives, dealers and others acting for and on its behalf from infringing the trade mark of the plaintiff or infringing the copyright of the Plaintiff contained in the artistic manner in which the said mark is depicted, or in any manner represent that its goods originate from the plaintiff or to do anything the exclusive right to do which is conferred upon the plaintiff as the owner of the trademark/copyright in the said mark. The defendants are further restrained from manufacturing, selling offering for sale, advertising, etc., directly or indirectly goods under the trademark Kamdhenu or any other trademark, which may be desciptively similar to the plaintiff's mark. I further direct the rendition of accounts by the defendant. I also award cost of the suit in favour of the plaintiff and against the defendant.

15. However, it is noted that though the relief of rendition of account has been valued for the purposes of the jurisdiction at Rs.20,00,500/- for the purposes of court fee, it has

been valued at Rs.1,000/- and court fee of Rs.150/- only has been affixed thereon. The total court fee paid by the plaintiff is only Rs.300/-. To my mind, the suit has not been properly valued for the purposes of court fee and adequate court fees has not been affixed thereon. This Court in ***Bharat Sanchar Nigam Ltd. vs. Bharat Sanchar Nigam Executive Association (Regd.) and others,*** 130 (2006) DLT 195, deprecated the practice of valuing the suit for the purpose of pecuniary jurisdiction at higher value wherein court fees is not affixed accordingly, wherein it was held that though the fixation of value of the suit is in the discretion of the plaintiff, but once he exercises such discretion on bona fide belief, he is obliged to pay the court fee in accordance with the provision of the Court Fees Act, 1870. Consequently, the plaintiff is directed to pay ad valorem court fees on the amount of Rs.20,01,500/- at which amount the suit has been valued within one month. The decree shall be drawn up only upon the payment of the balance court fees by the Plaintiff.

**VIPIN SANGHI, J**

**December 04, 2007**
**P.K. BABBAR**